STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-230

April 3, 2001

MAINE PUBLIC UTILITIES COMMISSION
State Universal Service Fund for Local
Exchange Carriers (Chapter 288)

NOTICE OF
RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we initiate a rulemaking to establish a Maine Universal Service Fund (MUSF), pursuant to the provisions of 35-A M.R.S.A. § 7104. The MUSF mechanism will allow eligible local exchange carriers (LECs) who are unable otherwise to meet their allowed intrastate revenue requirement through other rates (primarily for local exchange and access services) to draw support from the Fund.

II. BACKGROUND

The Commission began the development of a USF with a Notice of Inquiry (NOI) issued on July 17, 1997, in Docket No. 97-429; continued with an NOI issued on October 27, 1998, in Docket Number 98-807. Most recently, on February 8, 2001, the Commission issued an NOI in *Maine Public Utilities Commission, Inquiry Into Implementing a State Universal Service Fund for Local Exchange Carriers*, Docket No. 2000-181. In that Inquiry, we proposed a high-cost universal service fund similar in many respects to the Rule we propose here. In drafting the present proposal, we relied to some extent on comments submitted in the Inquiry. In each of those proceedings, the Commission proposed a process for addressing USF issues and sought comments on a series of specific questions related to implementing one or more types of USF mechanisms.

The rule we propose in this Notice of Rulemaking (NOR) addresses a USF support mechanism for rural LECs who cannot achieve their overall revenue requirement if they maintain their local exchange rates at levels deemed affordable and comparable to those available in urban areas. We refer to the support mechanism as the "High Cost USF," because it is designed to assist LECs that serve high cost areas. We include all rural ILECs as eligible. To receive funding, however, rural LECs must undergo the process described in the Rule to determine the amount of any support.

We exclude Verizon Maine (Verizon) from eligibility for support from the Fund. The proposed Rule establishes Verizon's rates for each of its rate classes as the maximum rate benchmark for determining reasonable, affordable and comparable rates for the rural exchanges carriers. Verizon has demonstrated the ability to maintain reasonable and affordable rates for customers in all of its exchanges (which contain a disparate mix of high-cost and low-cost areas) within its existing rate structure. Verizon, at least at this time, cannot demonstrate overall "high costs" relative to other areas in Maine. In addition, Verizon is presently under an Alternative Form of Regulation (AFOR). Its rates are no longer based on the traditional rate base/rate of return principle, i.e., Verizon's costs. Verizon cannot have "high" costs for the purposes of this Rule if its costs are not relevant to its current rate regulation.

The Commission currently has in progress a proceeding for Verizon that may affect Verizon's rate levels, and by extension, the rate levels that are the benchmark for rural LECs under the USF Rule. The Commission is considering whether to extend or modify the present AFOR for Verizon. In that proceeding, Verizon has argued that some adjustment to basic exchange rates is warranted.

We intend to adopt the proposed rule prior to May 30, 2001, the date of the next required adjustments to intrastate access rates, pursuant to § 7101-B, and to have the High Cost Maine USF in effect shortly thereafter. Thus, the rule will allow any rural ILEC that we find to need high cost support to begin participating in the USF mechanism simultaneously with its required reduction in access rates.

The High Cost USF is intended to accommodate policy objectives contained in state and federal statutes. Some of the state statutes may appear to promote competing policy goals. 35-A M.R.S.A. § 7101 requires that State telecommunications policy must promote and encourage universal service, economic development and access to information services for all citizens of Maine. Section 7101-B of Title 35-A requires that intrastate access rates be adjusted periodically to a level that is less than or equal to interstate rates. Section 7104 further requires, among other things, the Commission to ensure that similar telecommunications services are available to consumers throughout the State at "reasonably comparable rates." Section 7104 also sets forth the parameters and requirements that the Commission must follow should it decide to implement a state USF. Finally, § 7303 prohibits mandatory local measured service and mandates that the Commission establish traditional flat rates for local telephone service at as low a cost as possible. The Commission has discussed in detail the interrelationship between the last provision and the requirement that access charges be reduced to interstate levels (35-A MRSA § 7101-B) *Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone Company d/b/a NYNEX (Reopened),* Docket No. 94-123, Order (March 17, 1998).

Two goals of the federal TelAct of 1996 are to promote local service competition, and to encourage affordable and comparable rates. Section 254 of the TelAct specifically establishes the national principles for universal service and for the establishment of a USF support mechanism, whose main purpose is to provide support for high cost service areas. Among its provisions is one requiring that customers in all areas of the country have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable in function and quality and are available at reasonably comparable rates.

Each of the independent companies filed its required access rate reductions for effect on May 30, 1999, and then entered into discussions with the Commission Staff, the OPA and other interested parties. Based on an analysis of each company's then-current earnings position, and the effect that reducing intrastate access rates to the NECA tariff level would have on the company's earnings, all the companies filed, and the Commission approved, stipulations that provided, in part, that most of the independent companies would reduce their intrastate access rates to the NECA 5 tariff level on May 30, 2001. In response to the access rate reductions, nine companies agreed to file rate cases on August 30, 2000, while the others, except for two companies that had recently been sold and had individual stay-out provisions under the terms of the approval of their sales, agreed to two-way stay-outs until various dates beyond May 30, 2001. The stay-out provisions prohibited each company from filing a general rate case proceeding under Section 307, and also restricted parties to the stipulation from initiating general rate cases proceeding under Section 1302. The purpose of the stay-out provisions was to recognize the possible existence of excess earnings during the period prior to the date of the access rate reductions, to be followed by a commensurate period of potential under-earnings during the term of the stay-out. At the end of the each stay-out, each company is permitted to file a rate case based on its then-current earnings position.

On August 30, 2000, Unitel, Community Service, Mid-Maine and the six Maine TDS telephone companies filed rate cases in accordance with the terms of their access rate stipulations. The rate cases currently in progress will produce an overall revenue requirement for each company, based on a reasonable rate of return. Those cases will also establish a rate design. One rate design under consideration in these cases would require an increase in the basic exchange rates of each company. To comply with the rate comparability requirements contained in state and federal law, we anticipate that the local rates of each company will not increase above the local rates of Verizon Maine for exchanges with similar calling areas. That amount of rate increase required to approach or equal Verizon's rates may be substantial for customers in some exchanges, and some type of phase-in may be needed to avoid "rate shock." Even with the substantial local rate increase contemplated in the rate cases, some of the companies may not have sufficient revenue to allow them to earn a reasonable return. The High Cost Universal Service Fund will provide additional support to companies that are found to be unable otherwise to have the opportunity to earn a reasonable rate of return.

III. THE PROPOSED RULE

Under the rule, the Commission will determine the residual revenue requirement for each rural LEC, i.e., the revenue requirement a company cannot meet with basic local exchange service rates that are comparable to those of Verizon (or that are at an interim phase-in stage toward Verizon rates); access charges at the NECA 5 level; and other rural ILEC revenues (e.g., for optional services). The ILECs will then qualify for support from the High Cost USF. The Fund will be supported by an assessment on the telecommunications services of IXCs, LECs, mobile telecommunications carriers and paging companies. A formula included in this Rule will determine the amount of contributions into the fund.

Eligibility and Calculation of Support Amount Required

Rural ILECs that are also ETCs doing business in the State of Maine will be eligible for support from the Fund. To be found eligible to receive high cost USF support, those ILECs will be required to undergo a rate case proceeding that is reasonably contemporaneous with initially receiving high cost MUSF support. The rate case will establish the company's intrastate revenue requirement, based on an examination and analysis of the company's costs (net of federal USF support amounts), rate base, and a reasonable return on rate base. During the rate design phase of each case, the Commission will determine a reasonable level for the company's basic service and ancillary rates (e.g., for optional services), based on the affordability and comparability standards contained in Maine and federal law. The rates of Verizon Maine for exchanges having similar basic service calling areas (BSCAs) will serve as a rate ceiling for the rural LECS. The Commission will allow increases up to that level. The Commission may waive the requirement that a full rate case proceeding be conducted prior to any change in the amount of High Cost fund support payments deemed required by the ILEC.

At the rate design phase of the rate cases for companies seeking high cost support, intrastate access rates will be set equal to the then-current NECA interstate rates, and local rates will be raised to levels equal to those of Verizon Maine for exchanges having calling areas for a similar (unless those rates will be phased in). If, after those adjustments, a company is found to be unable to meet its allowed revenue requirement, any remaining deficiency will be recovered from the High Cost USF.

The access statute requires that intrastate access rates be adjusted every two years. Changes in the basic structure and level of *interstate* access rates (that in turn, through 35-A M.R.S.A. § 7101-B, limit *intrastate* rates) are expected in the near future. Changes in payment levels will be required when circumstances dictate that they are needed.

Extraneous or exogenous events or factors or a change in competitive or regulatory factors may cause a change in the support amount required for an individual company or a broader basis. Other uses of the USF (e.g., payments to currently implicit social programs that are currently in effect, such as Lifeline, Linkup and the Schools and Libraries Fund) will be considered at a later date.

Disbursements from the Fund

The Fund Administrator will make disbursements from the Fund based on the annual need determined by the Commission. ILECs will receive payments in 12 equal monthly installments.

The company will continue to receive the monthly USF amount until the Commission orders a change or a cessation (by rule or order), or until the company voluntarily decides that it no longer needs the payment. Changes may occur following rate proceedings, adjustments to interstate access charges (that intrastate charges cannot exceed), or changes in the amount of federal USF support.

The Amount of the Fund and Contributions

The High Cost USF will be funded through an assessment on all intrastate retail revenues of all interexchange carriers (IXCs), local exchange carriers (LECs), mobile telecommunications carriers, and paging providers, as permitted under Section 7104.

We propose to subject all intrastate retail revenue to assessment in order that the base for contribution will be as broad as possible. Although the purpose of the Fund is to maintain affordable and comparable local exchange service rates, we believe that it is appropriate to subject local service revenues to assessment even though there may be some circularity of payment and benefits. All services (local, interexchange, mobile and paging) benefit from the existence of universal service and the ability to call large numbers of telecommunications subscribers.

Only revenues for telecommunications services are subject to the assessment. Equipment sales are not included. While we recognize that carriers' revenues will vary over time, fixing the base percentage of total fund costs that each carrier must pay for the following 12 months (based on the carrier's intrastate retail revenues divided by all carriers' total intrastate retail revenues) will bring some stability to the calculation of contribution amounts. Each July, the Fund Administrator will establish that percentage. The amount that a carrier pays each payment period may vary, however, as the needs of the fund change. Based on the ongoing Commission decisions regarding individual LEC eligibility for payments from the fund, the Administrator will determine the amount of money that must be disbursed from the fund. To this amount the administrator will add the cost of administering the fund and an additional amount to cover uncollectibles. This total cost amount will be the second factor in the fund calculation formula. Determining the contribution of each carrier will require multiplying the total fund costs the first factor described in Section 4(B) by the percentage of total costs assigned to the carrier (the fraction described in Section 4(B)).

Section 4(B) of the proposed rule states that the administrator will bill contributors on a monthly basis. Monthly billings would avoid any possible need for reconciliation if the total amount of the Fund may change at any time, which may happen as rate cases are completed or for other reasons listed in the rule. Contributors may prefer the stability of a set amount over a longer billing period (e.g., three months, six months, or annually), however, if a longer period may require reconciliation. The frequency of adjustments to the total size of the Fund should decrease over time, however, as initial rate cases are completed. We request comments that address the optimum billing period.

IV. PROCEDURES FOR THIS RULEMAKING

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. Written comments on the proposed amended rule may be filed with the Administrative Director no later than May 11, 2001. Please refer to the Docket Number of this proceeding, Docket No. 2001-230, when submitting comments. No public hearing on this matter is presently scheduled, but one will be held if requested by any five interested persons. Persons wishing to request a public hearing on this rule must notify the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018 (telephone: 207-287-3831), on or before April 25, 2000.

The Commission intends that this Chapter will be effective by the date of the next required adjustments to intrastate access rates, pursuant to § 7101-B, on May 30, 2001. Any rural ILEC deemed in need of high cost support may begin participating in the USF mechanism simultaneously with its required reduction in access rates on May 30, 2001.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal or nonexistent. The Commission invites all interested parties to comment on the fiscal impact and all other implications of this proposed rule.

The Administrative Director shall send copies of this Order and the attached rule:

1. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

2. All persons listed on the Commission's list of persons to who wish to receive notice of all electric restructuring proceedings;

3. All telecommunication providers.

4. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

5. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, this 3rd day of April, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond